

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor : Baur et al.  
Assignee : Bayer CropScience AG  
Serial No. : 10/501,434  
Filed : January 07, 2003  
For : Use of alcohol ethoxylates as penetration enhancers

**DECLARATION**

I, Prof. Dr. Peter Baur, state that I reside at *Schulstr. 5, 86938 Schondorf* Germany, I am a citizen of Germany; that I am familiar with the subject matter and the prosecution of the instant application Serial No. 10/501,434 filed on January 07, 2003, entitled; Use of alcohol ethoxylates as penetration enhancers that I consider myself qualified by my education, knowledge and many years of experience in agricultural chemistry to make this Declaration; and that I have made the following observations:

The instantly claimed invention is directed to the combination of ethoxylates and herbicidally active triazolinones. In my opinion, the invention is clearly distinguishable from the prior art.

2. The following tests have been carried out under my supervision and my control.

The below given data (relating to several tridecyl ethoxylates having different degrees of ethoxylation) were collected under the same experimental conditions as disclosed in the application (see at pages 13 to 17 of the description).

	<u>% uptake after 72 hours</u>
Control	0.24
<b>Lutensol TO6</b>	<b>14.10</b>
Lutensol TO8	0.99
Lutensol TO10	2.14
Lutensol TO12	4.03
Lutensol TO20	5.40

The below data show that the selection of the tridecyl ethoxylate having an ethoxylation of n=6 can't be expected by the person skilled in the art as of being superior in view of compounds having a slightly different degree of ethoxylation. The rate of uptake of propoxycarbazone-sodium is **decreasing from TO20 (n=20) to TO8 (n=8)** and thereafter it **increased unexpectedly by using TO6 (n=6)**! This dramatic increased uptake rate of a herbicidally active triazolinone can't be predicted or assumed by a person skilled in the art knowing the teaching disclosed in US 6,656,883 (Vogt et al), US 6,395,684 (Feucht et al) and US 6,562,760 (Feucht et al) neither in view of any of these publications alone nor in a combination of some or all of these.

Further, I have collected data demonstrating a comparison of the uptake of propoxycarbazone-sodium by using Lutensol TO6 (i.e. branched, isotridecyl having 6EO-units, according to the invention) compared to compounds having linear tridecyl residues (Dehydol LS8 (= C12-14 EO8); Genapol C100 (= C12.5 EO8.4; Simulsol P4 (= C12 EO4):

	<u>% uptake after 24 hours</u>
Control	0.10
Dehydol LS8	3.30
Genapol C100	2.70
Simulsol P4	3.30
<b>Lutensol TO6</b>	<b>20.00</b>

Again, the significantly increased uptake rate of a herbicidally active triazolinone can't be predicted or assumed by a person skilled in the art knowing the teaching disclosed in US 6,656,883 (Vogt et al), US 6,395,684 (Feucht et al) and US 6,562,760 (Feucht et al) neither in view of any of these publications alone nor in a combination of some or all of these.

3. Above given data show pretty well that the superior uptake rate concerning herbicidally active triazolinones in the presence of a tridecyl ethoxylate having 6 ethoxylation units can't be predicted or assumed by a person skilled in the art knowing the teaching disclosed in US 6,656,883 (Vogt et al), US 6,395,684 (Feucht et al) and US 6,562,760 (Feucht et al) neither in view of any of these publications alone nor in a combination of some or all of these.

4. Therefore, it is my opinion that the instant invention is clearly different from and is not obviated by the information disclosed in US 6,656,883 (Vogt et al), US 6,395,684 (Feucht et al) and US 6,562,760 (Feucht et al) neither in view of any of these publications alone nor in a combination of some or all of these.

I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 27<sup>th</sup> day of May, 2009

Signed: 